IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE C.NAGAPPAN

WRIT APPEAL NO.300 OF 1998 AND WRIT APPEAL NO.843 OF 1998

A.Silveira ... Appellant in W.A.
No.300/1998 and
respondent in
W.A.No.843/1998

-Vs-

1. Managing Director,
Indian Overseas Bank,
Central Office,
762, Anna Salai,
Chennai-600 002.

2. General Manager,
Indian Overseas Bank,
Central Office,
762, Anna Salai,
Chennai-600 002.

3. K.Balasubramaniam,
12/12, Subaragh, Shenoy Road,
Nungambakkam, Chennai-600 034.

4. R.Ramachandran,
121, Sterling Road,
Nungambakkam, Chennai-600 034. ... Respondents in W.A.
No.300/98 &
Appellants in
W.A.No.843/1998

Writ Appeals under Clause 15 of Letters Patent against the
order of the learned Single Judge in W.P.No.17347 of 1994, dated 11.12.1997.

F!or Appellant in
W.A.300/98 and ::: Mr.K.Chandru,
respondent in Senior Counsel for
W.A.843/1998 Mr.K.Kannan

^For Respondents in
W.A.300/98 and ::: Mr.N.G.R.Prasad
appellants in
W.A.843/1998

:COMMON JUDGMENT

C.NAGAPPAN,J

Both the writ appeals are directed against the order of the learned single Judge, dated 11.12.1997, in W.P.No.17347 of 1994.

2. The writ petitioner is the appellant in W.A.No.300 of 1998. Respondents 1 to 4 in the writ petition are the appellants in W.A.No.843 of 1998.

3. The writ petitioner joined the services of the first respondent Bank as an unpaid probationary clerk in 1944 and reached the position of Deputy General Manager at the Central Office, Madras and was due to retire on superannuation on 29.2.1988. On 27.2.1988, the petitioner was served with a letter from the third respondent placing him under suspension in terms of Regulation 12(1)(a) of the Indian Overseas Bank Officer Employees' Conduct and Discipline & Appeal Regulations, 1976 on the ground that enquiry into the charges levelled against him on 15.2.1986 was contemplated. On the same day, the petitioner was served with another letter from the General Manager intimating him that in view of the suspension order, he is not permitted to retire by virtue of the provisions of Regulation 20(3)(c). The charge sheet, dated 15.2.1986, related to certain acts of commission and omission alleged to have been committed by the petitioner as 'the Chief, International Division, Central Office, during the period 1978-1982'. At that time, the petitioner was Assistant General Manager in the matter of Drawing Arrangement of Rupee Accounts extended to International Finance and Exchange Corporation (IFEC), Doha and Arabian Exchange and Financial Organisation (AEFO), Doha and on account of the failure of those companies, there was loss to the Bank. Originally an Inspection Committee was specially constituted by the Board on 7.1.1983 to analyse the circumstances which resulted in the loss and identify the Operational/Executive Officials of the Bank on whom responsibilities could be fixed for the loss and according to the petitioner, the Committee attributed the losses only to the then supervision and control systems in force and did not fix the responsibility on any single individual. Five other Public Sector Banks in India suffered similar losses in respect of the very same companies. The petitioner has further stated that not withstanding the Committee's Report, a show cause notice, dated 22.7.1983, was issued to the petitioner calling his explanation for the alleged irregularities/lapses observed in the Drawing Arrangements of IFEC, Doha and AEFO, Doha. The petitioner in his reply, dated 14.10.1983, refuted the allegations and pointed out the steps taken by him at every stage to protect the interest of the Bank. No action was taken against the petitioner for 2-1/2 years after the receipt of his reply and the charge sheet was served on 27.2.1986 and then the petitioner was suspended. The petitioner

filed independent writ petitions challenging the suspension order and the charge memo. The disciplinary authority passed final order, dated 19.10.1992, dismissing the petitioner from service. The petitioner filed an appeal, dated 4.5.1993, to the Managing Director, who is the appellate authority and he, by his order, dated 25.1.1994, set aside the order of dismissal and imposed the penalty of removal from service. Challenging the same, the petitioner filed writ petition No.17347 of 1994 for issuance of a writ of certiorari to quash the orders of Respondents 1 and 2, dated 25.1.1994 and 19.10.1992.

4. The respondents in their counter contended that the petitioner was suspended for gross irregularities committed by him while he was functioning as Assistant General Manager/Deputy General Manager of International Division at Central Office handling foreign exchange transactions in respect of rupee drawing arrangements with IFEC, Doha and AEFO, Doha and the Bank sustained loss about Rs.5.50 crores. He was served with a charge sheet, dated 15.2.1986 and since he was due for retirement on 29.2.1988, he was placed und er suspension on 27.2.1988 for the purpose of completing the enquiry. It is further stated in the counter that the disciplinary authority conducted the enquiry as per rules and proposed the punishment of dismissal and the petitioner was given an opportunity to show cause against the punishment and thereupon order of dismissal, dated 19.10.1992, was passed. The petitioner filed an appeal to the appellate authority and a personal hearing was given to the petitioner and the appellate authority reduced the punishment of dismissal into one of removal from service. In view of reduction in penalty, all the terminal benefits due to the petitioner amounting to Rs.6,77,848.69 was released to the petitioner on 20.4 .1994. Disciplinary proceedings were conducted in an impartial manner as per rules and the allegations levelled by the petitioner are devoid of merit.

5. The writ petitioner in his reply affidavit contended that he alone is not wholly responsible for the administration of the International Division and both the authorities never considered this ground and the petitioner had been made a scapegoat.

6. The learned single Judge concluded that the orders of disciplinary authority and appellate authority are liable to be quashed and allowed the writ petition in part and held that the petitioner is entitled to all the terminal benefits as if he is retired on superannuation, but all of them are restricted to 50% alone and he is also entitled to 50% of the pension only. The learned Judge further held that it is open to the Bank to conduct a fresh enquiry into the matter against all the persons involved, in accordance with law.

7. Aggrieved by the above order, the petitioner as well as the respondents have preferred independent writ appeals.

8. The order is assailed by both the appellants before us on the main ground that the learned Single Judge has no jurisdiction in granting only 50% of the terminal benefits, including pension to the writ petitioner. The observation of the learned Single Judge that it is open to the Bank Management to conduct fresh enquiry into the matter against all the persons involved in loss is also questioned. The learned Single Judge has concluded

that both the order of disciplinary authority and that of the appellate authority were liable to be quashed and allowed the writ petition in part, but has granted only 50% of terminal benefits, including pension payable to the writ petitioner.

9. The learned senior counsel appearing for the appellants/ respondents in the writ petition, contended that the learned Judge, having held that the writ petitioner is one among the persons who have caused loss to the bank, erred in quashing the orders of both the authorities removing the petitioner from service. It is well settled that in a departmental enquiry the High Court has no jurisdiction to go into the truth of the allegations/charges except in a case where they are based on no evidence or where they are perverse. Under Article 226 of the Constitution, it is the power of judicial review and the High Court only examines the procedural correctness of the decision making process. For this reason, the order of the learned Single Judge insofar as it goes into or discusses the truth and correctness of the charges is unsustainable in law.

10. Judicial Review, generally speaking, is not directed against a decision, but is directed against a decision making process. In the present case, on a perusal of records, we are satisfied about the procedural correctness of the decision making process. The charges cannot be termed as perverse and the Inquiring Authority as well as the Appellate Authority have granted due opportunity to the writ petitioner and complied with the principles of natural justice.

11. There is also material in support of the charges, which is apparent from the evidence let in. All that could have been done by the learned single Judge is to find out asto whether there is material on record to prove the charges and if the material is there, there is no question of interfering with the enquiry. In the present case, the learned single Judge had erred in going into the merits of the matter on facts as if he was an appellate Court. The Enquiring Authority and the Appellate Authority had considered the matter in proper perspective and came to the conclusion that the charges stood proved and this conclusion reached by them cannot be assailed. Further, the learned single Judge could not have ordered a re-enquiry in the matter and he had no jurisdiction to bring down the terminal benefits including pension to fifty per cent and those findings are liable to be set aside.

12. The learned senior counsel appearing for the appellant/writ petitioner submitted that the writ petitioner had put in 44 years of unblemished service and he always had the interest of the Bank in mind while discharging his duties and he did not have any dishonest intention to cause loss to the Bank and he was not himself benefited and he alone cannot be blamed for the loss and as on today he is 75 years old and sought for reduction of punishment from removal from service to compulsory retirement in which case the retirement benefits can accrue to him. The learned senior counsel relied on some rulings of the Apex Court to show that this Court has ample power to reduce the punishment. The learned senior counsel for the appellants/respondents in the writ petition contended that though the disciplinary authority imposed the penalty of dismissal from service, the appellate authority took a lenient view and reduced the punishment of dismissal into one of removal from service and no further compassion need be shown to the writ petitioner.

13. On the question whether this Court itself can reduce punishment or has to leave the same with the disciplinary authority, the following judgments of the Apex Court are relevant.

(i) In the case of RANJIT THAKUR vs. UNION OF INDIA AND OTHERS - ((1987) 4 SCC 611, at page 620, the Apex Court has held as follows.

"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

(ii) In the case of B.C.CHATHURVEDI vs. UNION OF INDIA AND OTHERS-((1995) 6 SCC 749, at page 762, it has been held as follows.

"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

iii) A Division Bench of this Court, to which one of us is a party (V.S.Sirpurkar, J), while deciding the case in W.P.No.92 of 1998 (A.Ramaswamy v. State of Tamil Nadu, represented by the Secretary to Government and two others) on 8.10.2001, has held as follows:-

It has to be considered now whether the case on hand can be said to be an exceptional or rare case for reduction of penalty by this Court itself, instead of sending the matter to the disciplinary or the appellate authority to reconsider the penalty imposed already. There is a single instance of proof of receipt of Rs.5,000/- from a friend on the promise of getting her selected for the Teacher's post. Though the plea of the delinquent/petitioner that the amount was received by way of loan to meet the emergency situation towards the treatment of his father was not believed by the disciplinary authority, still the fact that there was no denial of the receipt of the amount by the petitioner, has to be taken into consideration while imposing penalty. The second aspect is that he repaid the amount together with interest. The third and the most important one is that he had put in 33 years of unblemished service and on the verge of the retirement, this unfortunate incident has taken place.

Considering the above situations, we are of the view that the plea of the learned senior counsel to reduce the penalty from that of removal from service to that of compulsory retirement can be accepted."

14. It has to be considered now whether the case on hand can

be said to be exceptional or rare case for reduction of penalty by this Court itself instead of remitting the matter back to the disciplinary authority to reconsider the penalty.

15. The Bank has suffered a loss to the tune of Rs.5.50 crores in the matter of drawing arrangement of Rupee accounts extended to IFEC, Doha and AEFO, Doha during the period 1978-82 and the writ petitioner was the Chief of the International Division, Central Office of the Bank at that time and the Committee which was specifically constituted on 7.1.1983 to enquire into and to analyse the circumstances which resulted in the loss and to identify the Operational/ Executive Officials of the Bank on whom responsibility could be fixed for the loss, in its report, dated 15.3.1983, had attributed the losses only to the then supervision and control systems in force and did not find proper to fix the responsibility on any single individual for the flaws of the procedure and the system. It is also admitted fact that the collapse of Gulf Exchange Companies resulted in the loss to the respondents Bank as well as five other Nationalised Banks. The Inquiring Authority in its findings under Charge No.2 has stated that there was laxity at branch level and also at the central office level and the charge sheeted officer alone may not be held accountable. From the above findings, it is clear that besides the writ petitioner other officers were also concerned with the running of the account and the question of joint liability cannot be brushed aside.
16. The writ petitioner joined as an unpaid probationary clerk in 1 944 and rose to the position of Deputy General Manager and he had blemishless long service. It is not alleged that the petitioner had any dishonest intention to cause loss to the Bank and it is also not the case that the petitioner was himself benefited in the transaction. The learned senior counsel for the appellants/ respondents Bank fairly admits that no fraud or dishonesty was alleged against the petitioner. As on today, the writ petitioner is said to be 75 years old.

17. Considering the circumstances of the case, we are of the view that the plea of the learned senior counsel appearing for him, to reduce the penalty from that of removal from service to that of compulsory retirement can be accepted. Since both the penalties are major penalties under Regulation 4 of the Indian Overseas Bank Officer Employees' Conduct and Discipline & Appeal Regulations, 1976, we consider it not necessary to remit the matter to the disciplinary authority for considering the question of penalty with a view to shorten the litigation. Since the penalty of removal from service imposed on the petitioner appears to be disproportionate and not commensurate with the act of delinquency of the petitioner, we propose to modify the penalty of removal from service into one of compulsory retirement.

18. In the result, the order of the learned Single Judge is set aside and the penalty of removal from service imposed on the petitioner by the appellate authority stands modified to that of compulsory retirement and the writ appeals are disposed of accordingly. No costs.

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Internet:Yes.

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To:

1. Managing Director,
Indian Overseas Bank,
Central Office,
762, Anna Salai,
Chennai-600 002.

2. General Manager,
Indian Overseas Bank,
Central Office,
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